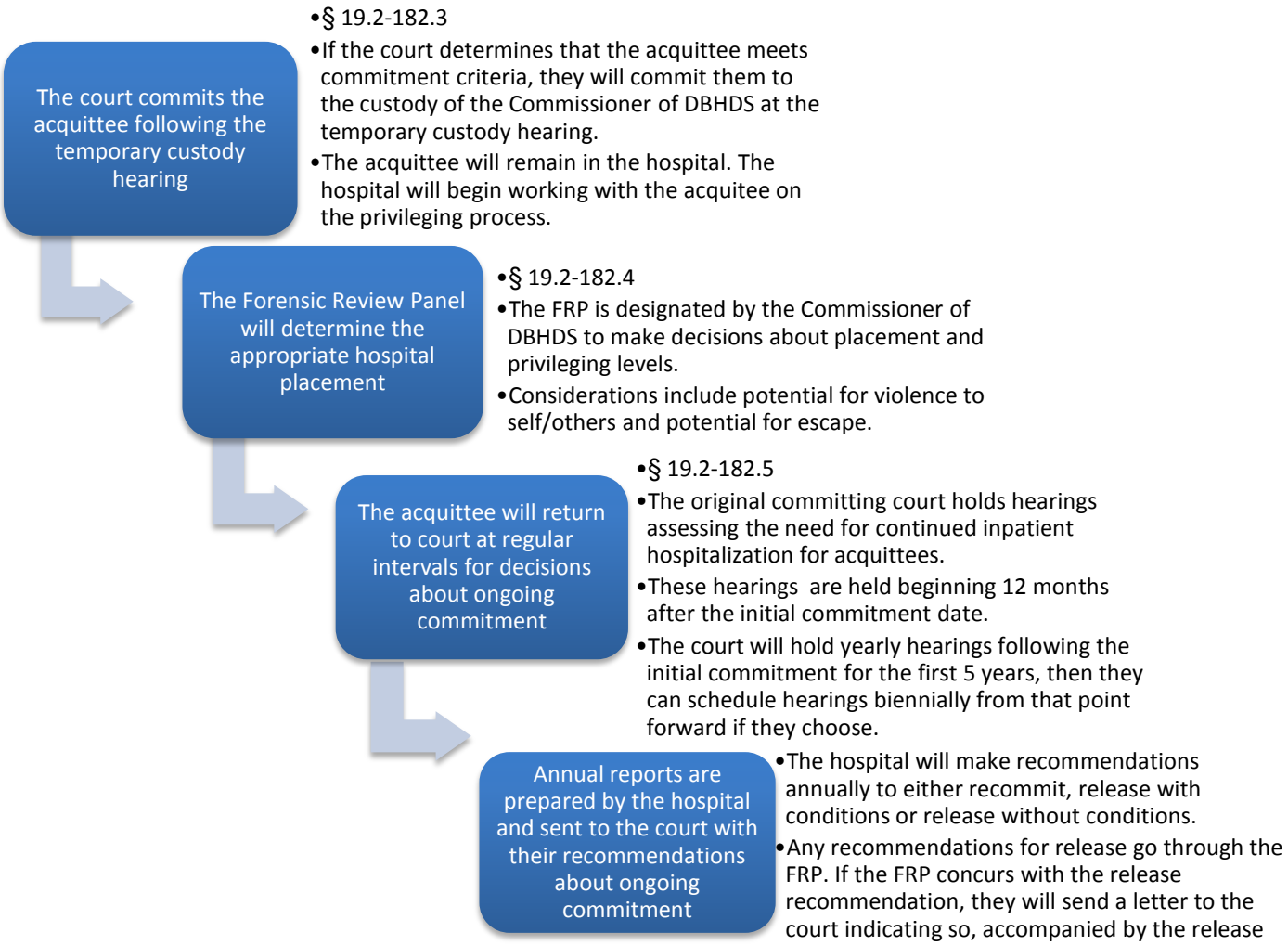
Section 3:

Commitment & the Graduated Release Process

Virginia Department of Behavioral Health & Developmental Services

Ongoing Court Hearings & Reporting to the Court



Initial Commitment and Placement Decisions	§ 19.2-182.4
	If the court determines that the individual will be committed to the custody of the Commissioner of DBHDS, it will issue an intial commitment order.
	The Forensic Review Panel, as designated by the Commissioner, shall make a determination of the appropriate placement of each acquittee.
	Placement can be in any state-operated facility.
	Decisions are based on potential for violence and potential for escape.
	The acquittee will return from court to the hospital unit where they were placed during the temporary custody period. In most cases this is the maximum security unit at CSH.
	If the hospital feels that it is appropriate, they will begin the privileging process by requesting transfer to a less secure unit (aka, civil transfer), if they are not already on a civil unit. The FRP must approve this placement.
	The treatment team will work with the acquittee on navigating the graduated release process from that point forward.

Continuation of Confinement Hearings	§ 19.2-182.5
	The committing court will hold hearings on a regular basis to assess the need for continued inpatient hospitalization for insanity acquittees.
	These hearings will occur every twelve months for the first 5 years following the initial commitment.
	Following the first 5 years, the court can schedule the continuation of confinement hearings bienially as allowed by Code. However, most courts continue annual hearings.
	At each hearing, the court will decide if the acquittee should remain committed, be released with conditions, or be released without conditions. The same criteria for commitment and release apply at the annual continuation of confinement hearing as in the initial commitment.
	If recommitted, the court will issue a recommitment order at the hearing.

Annual Reports	The treatment team at the hospital will provide to the court, 30 days prior to the continuation of confinement hearing, a report evaluating the acquittee's condition and recommending treatment.
	This report is prepared by either a psychologist or psychiatrist at the facility who is qualified to perform forensic evaluations.
	The facility will send a copy of the annual report to the judge, the defense attorney, the Commonwealth's Attorney, the CSB NGRI Coordinator, the FRP, and the Office of Forensic Services.
	If this report recommends recommitment, it is sent directly to the court and all parties listed above. If the report recommends release (either with conditions or without), the team will first send their request/recommendations to the FRP for review and approval.
	If conditional release is recommended, the team will work jointly with the CSB to prepare a conditional release plan and submit to the FRP along with the annual report. The FRP will make final recommendations to the court in matters of release.
	An annual report with recommendations is required, even in years in which no continuation of confinement hearing is held.
Second Opinion Evaluations	§ 19.2-182.5(b)
	The acquitee has the right to request release at each continuation of confinement hearing (no more than once per year).
	If the acquittee requests release at the annual hearing, the court shall issue an order that a second evaluator perform an evaluation of the acquittee's condition.
	The second evaluator shall be a qualified psychiatrist or psychologist.
	The Commissioner, via the Office of Forensc Services, will appoint a second DBHDS evaluator to complete the report.
	In the instance of a second opinion evaluation, recommendations for release do not require approval from the FRP before being sent to the court.
	The evaluation will be completed and a report issued within 45 days of issuance of the order.
	If the second evaluator recommends release, the CSB and the hospital will work jointly to prepare either a Conditional Release Plan or discharge plan and submit it to the FRP.
	The FRP will then review and submit the release plan to the court, along with their own recommendation.
	In these cases where a second evaluation is ordered by the court, the court will receive: 1) the original annual report and recommendation; 2) the second opinion evaluation; and 3) in the event either one recommends release, the FRP recommendation.

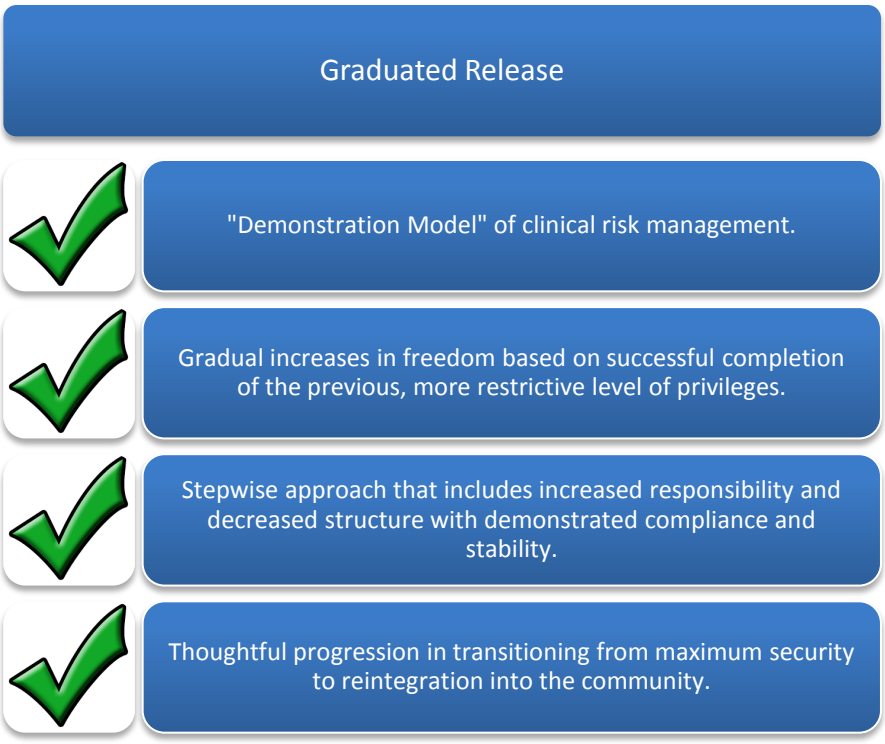
Petitions for Release	§ 19.2-182.6
	The acquittee may petition the committing court for release only once in each year in which no annual judicial review is required pursuant to § 19.2-182.5. The Commissioner may petition the court for the acquittee's release at any time, even if it does not coincide with the annual continuation of confinement hearing.
	The party petitioning for release shall transmit a copy of the petition to the Commonwealth's Attorney.
	In these cases, the court must respond to the acquittee's petition by ordering evaluations of their condition.
	The Office of Forensic Services, acting on behalf of the Commissioner, will appoint two evaluators to assess and report on the acquittee's need for inpatient hospitalization.
	In the instance of an acquittee's petition for release, evaluator recommendations for release do not require approval from the FRP before being sent to the court.
	Evaluations are to be completed and reports submitted within 45 days of the court order.
	If either of the evaluators recommends release, the hospital and CSB must jointly prepare either a Conditional Release Plan or discharge plan and submit to the FRP to review and make recommendations to the court.

Escape from Custody	§ 19.2-182.14
	Any person who is placed in the temporary custody or comitted to the custody of the Commissioner following an acquittal by reason of insanity, and escapes from that custody shall be guilty of a Class 6 felony.
	If the acquittee is subsequently returned to the custody of the Commmissioner, the treatment team will submit a packet to the FRP, including updated risk assessment and Analysis of Aggressive Behavior, mental status exam, and recommendations regarding treatment and privilege levels.
	Upon return to the hospital, all privilege levels are considered revoked until reviewed and approved by the FRP.

Notification to the Commonwealth's Attorney	§ 19.2-182.4
	The Attorney for the Commonwealth should be notified in writing of any changes in an acquittee's course of treatment that will involve authorization for the acquittee to leave the grounds of the hospital.
	Specifically, this includes escorted or unescorted community visits, trial visits (as part of an approved conditional release plan), or transfers from one faciltiy to another.
	This notice is submitted by the facility's Forensic Coordinator.

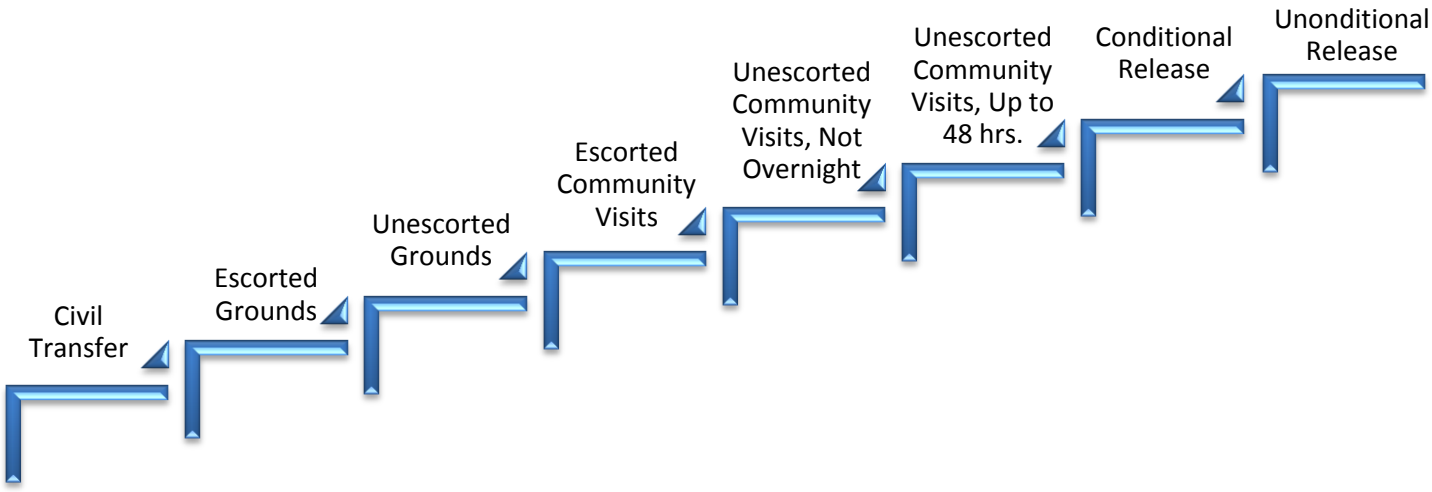
Role of the Facility's Forensic Coordinator During the Commitment Period	The Forensic Coordinator monitors the progress, management, conditional release planning, and discharge planning for acquittees for the duration of their placement in the custody of the Commissioner.
	The Forensic Coordinator serves as a consultant to the facility treatment teams with regard to the hospital's role with the courts in acquittee matters, and the acquittee privileging process.
	The Forensic Coordiantor ensures that the CSB NGRI Coordinator is notified of all court dates scheduled for acquittees in the custody of the Commissioner.
	The Forensic Coordinator maintains communication wih the Office of Forensic Services regarding significant events involving acquittees in the custody of the Commissioner.

Graduated Release Process



Goals of Graduated Release Process	Provide acquittees with privileges consistent with their level of functioning and need for security.
	Ensure adequate risk assessment is conducted before granting increased freedom.
	Provide opportunities for acquittees to manifest appropriate functioning at various levels of freedom.
	Provide treatment teams with information regarding acquittees' ability to handle additional freedom and to comply with risk management plans.
	Minimize risk to public safety.

Privilege Levels



Decision-Making Entities

The Internal Forensic Privileging Committee (IFPC)

Based on the level of privilege being requested by the treatment team and/or acquittee, there are different levels of approval. All privilege increase requests must be approved by the IFPC before they are sent to the Forensic Review Panel (FRP).

There is an IFPC at every state hospital that houses insanity acquittees. It has at least five members from the staff of that facility, including a psychologist and psychiatrist and the facility director or his designee, the facility's Forensic Coordinator, and other professionals. The IFPCs meet weekly. The support of both the treatment team and IFPC is required before requests are forwarded to the Forensic Review Panel (FRP).

The only instances when privilege requests do not require IFPC approval before submission to the FRP are when the IFPC is not in support of release but : 1) the court has ordered the development of a release plan; or 2) when a Commissioner appointed evaluator has recomended release.

The IFPC ensures that the treatment team has submitted a complete packet with appropriate justifications for the request.

The IFPC reviews and approves the following privilege increases before sending to the FRP: civil transfer, escorted grounds, unescorted grounds, escorted community visits, unescorted community not overnight, unescorted community visits up to 48 hours, conditional release, unconditional release.

The Forensic Review Panel (FRP)

The Forensic Review Panel (FRP) is an administrative board established by the Commissioner to ensure that release and privilege decisions for acquittees appropriately reflect clinical, safety, and security concerns.

The FRP reviews requests that have already been approved by the IFPC, unless the court has ordered the development of a release plan or an independent evaluator has recommended release, in which case the IFPC does not have to review and the request goes directly to the FRP.

The FRP is a seven-member group with psychologists, psychiatrists, a community member, and a Central Office representative. The FRP meets weekly.

The privilege levels that the FRP must review include: civil transfer, escorted grounds (only if this was submitted at the same time as civil transfer), unescorted community not overnight, conditional release, and unconditional release.

Although the FRP reviews the requests, in the instances where the treatment team, IFPC, and FRP have all agreed to recommend unescorted community passes greater than 48 hours (trial passes at the approved residence), conditional release, or unconditional release, only the NGRI judge can give final approval to move forward.

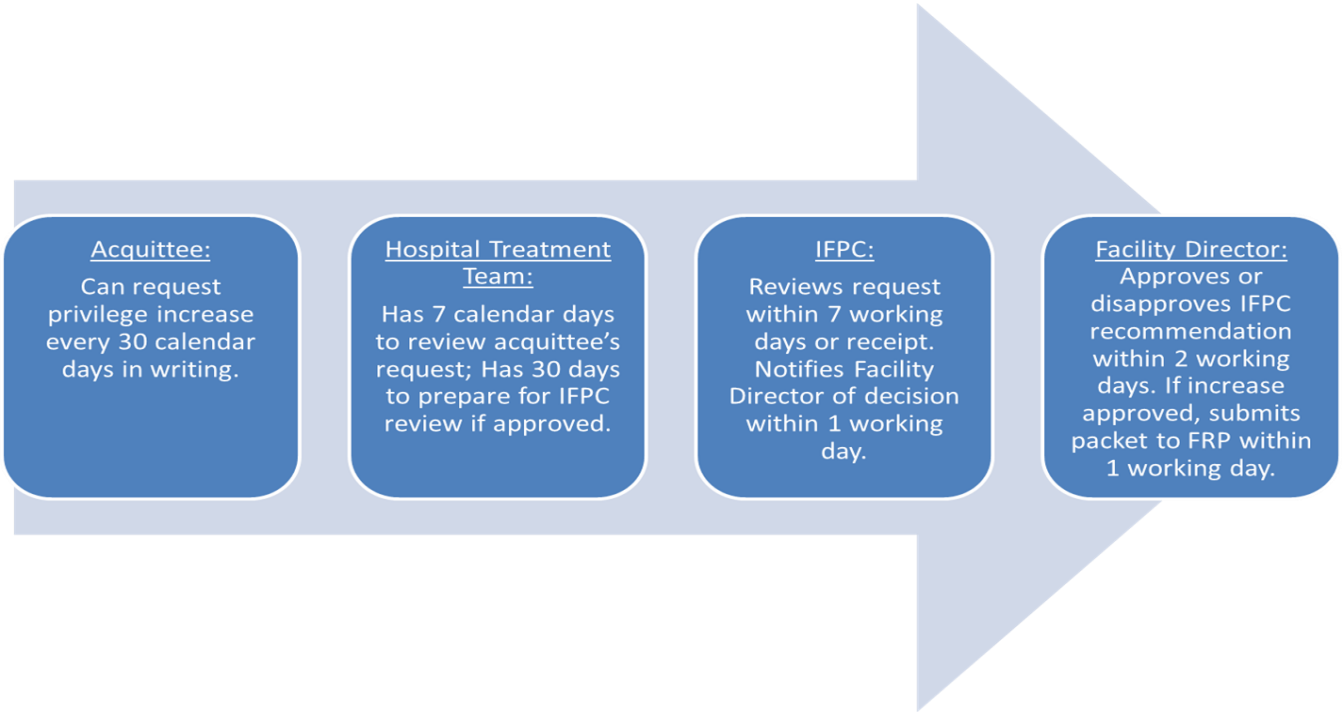
Once an acquittee is released to the community, the monitoring of compliance with the Conditional Release Plan (CRP) and changes to the CRP is between the acquittee, the CSB and the court. Neither the hospital IFPC, treatment team nor the FRP play any role once the acquittee is in the community on conditional release.

Permission Required for Privilege Increases

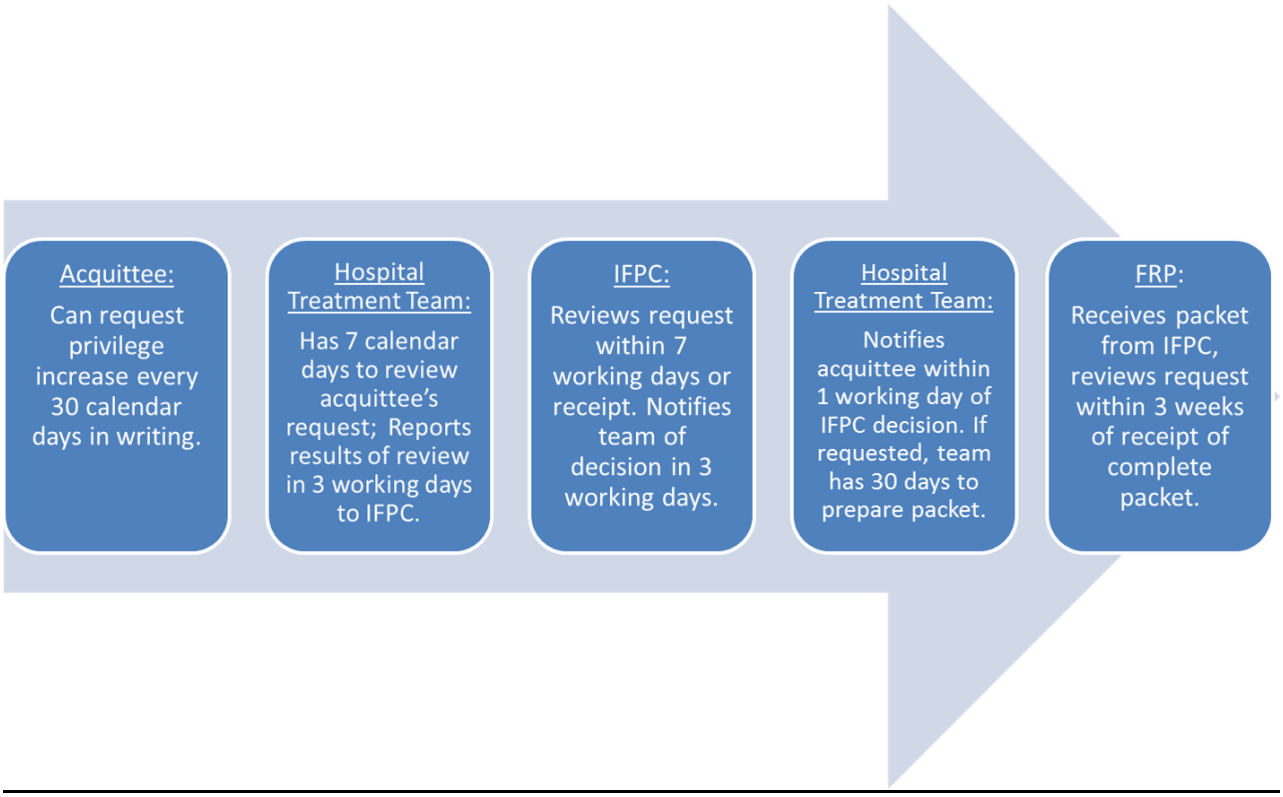
Level	IFPC	FRP	JUDGE
Civil Transfer	X	X	
Escorted Grounds	X If not approved by FRP with Civil Transfer	X If requested with transfer	
Unescorted Grounds	X		
Escorted Community	X		
Unescorted Community – Not Overnight (8 hour passes)	X	X	
Unescorted Community – Up to 48 Hours	X Following the prior FRP approval of UC-8 hour passes		
Conditional Release	X	X	X
Unconditional Release from Hospital	X	X	X

* In cases of escape or revocation of CR, the FRP may review and approve/disapprove any level of privilege.

The Process for IFPC-Only Privilege Requests



The Process for Requests Requiring FRP Review



So, how quickly does this process move?

Acquittees do not have to be on any one privilege level for a prescribed period of time. It is individualized to reflect the acquittee's adjustment to the increased level of freedom. Most acquittees do not request privilege increases every thirty days. While they have the right to request privilege increases at that frequency, most acquittees do not move through the process that quickly. **The current average length of stay in the hospital for NGRI acquittees is 6.5 years.** Many factors influence the speed with which acquittees move through this process, including response to treatment, compliance with treatment, insight into the need for treatment, violations of rules, decompensation or changes in symptoms, court process, etc.

The Risk Management Plan

The Forensic Review Panel and Internal Forensic Privileging Committees base their evaluations of privilege and release explicitly on the following risk assessment criteria:

The Risk Management Plan

At each level of privilege, the treatment team completes an update to the Analysis of Aggressive Behavior (AAB). In order for the packet to be submitted to the IFPC and FRP, a Risk Management Plan (RMP) must also be developed that describes the scope of the privilege, the conditions required before the privilege can be exercised, the expectations of the acquittee/staff and the procedures for monitoring risk. The items of the RMP must address the management of all the risk factors of the AAB.

There are basic components of an RMP that document the procedures that any treatment team would take in granting privileges to any hospital patient of any legal status. Then there are "extra" things, such as drug/alcohol screens and prohibition against possessing weapons or materials fashioned into weapons.

Since so many of the NGRI acquittees have similar risk factors, there are standard formats of RMPs, which will cover the risk management issues for most acquittees. Special conditions are added to tailor the RMP to the specific acquittee as needed. Special condition examples include supervised contact with children or spouses who were the victims of the NGRI offense, probation/parole notification, etc.

The Acquittee's Role	Acquittees are expected to be partners in risk management. The NGRI defense in Virginia means that the acquittee has acknowledged to the court that they committed the act, but should not be held legally responsible for their behavior because of active symptoms of mental illness at the time of the offense.
	So how do we hold them responsible for it? We say you may not be *legally* responsible for that offense, but you are responsible for preventing re-offense. The "responsibility" is acceptance of the fact that they did break the law and must now be responsible for doing everything possible so that it doesn't happen again. That means accepting the seriousness of the offense and potential seriousness of future problems.
	The acquittee must agree to all of the components of the Risk Management Plan, and is required to sign the RMP before its submission to the IFPC/FRP.
	The RMP spells out the actions that the acquittee will take to manage their own risk at a given privilege level.

The CSBs Role in the RMP Development and Implementation	The facility treatment team or facility Forensic Coordinator will send the CSB a copy of the Risk Management Plan, along with the AAB update.
	The CSB is required to review and sign any Risk Management Plan for Escorted Community, Unescorted Community (8hr and 48hr), unescorted trial visits greater than 48 hours, conditional release, and unconditional release levels.
	The plan will outline not only the steps that the acquittee will take to manage their risk, but also the role of treatment providers in helping the acquittee manage their risk. It is very important that the CSB take an active role in reviewing and providing feedback on the RMP.

Misdemeanant vs. Felony Insanity Acquittees

NGRI Findings for Misdemeanor Charges

§ 19.2-182.5(c)

The Code of Virginia was amended in 2002 to allow for the use of the insanity plea in cases involving misdemeanor charges. Since that time, approximately 15% of all new insanity findings have been for misdemeanor charges.

If an individual has been found NGRI for misdemeanor(s) only, they will still go through the process that we describe in this manual, including the temporary custody evaluations and recommendations either to release with conditions, release without conditions, or commit to DBHDS.

The NGRI court will still make a determination based upon the temporary custody evaluations to commit, release with conditions, or release without conditions.

The only major *difference* is that the Code limits the amount of time that these Misdemeanant NGRI acquittees can remain committed to DBHDS. If they are committed after the Temporary Custody period, they will go through the Graduated Release process like any other acquittee. However, they can not remain in the hospital longer than 12 months after the date of their *acquittal*. Time in jail following their acquittal, prior to hospital admission, will count towards those twelve months.

If the acquittee remains in custody the entire 12 months, at the end of that time the treatment team will assess the need for ongoing inpatient treatment, make recommendations to the FRP and the FRP will send a letter to the court with one of three recommendations:

1. Conditionally Release
2. Unconditionally Release
3. Civilly Commit

If civilly committed at this point in the process, the acquittee's NGRI case is closed, and they are converted to a civil status at the hospital. Eventually, when discharged, they will have no further obligations to the court.

If the individual is Unconditionally Released, they too will have no further obligations to the court.

If the individual is conditionally released, they will be discharged with a release plan like any other acquittee, and there is no limit to the time they can be on conditional release. At that point they are treated the same as a felony acquittee on conditional release.

If they do not require the full 12 months of treatment during their first hospitalization, they can be conditionally released. However, if revocation is needed later, they can only remain hospitalized under the NGRI status for the remaining balance of the 12 months, then the three options again apply: conditional release, unconditional release, or civil commitment.

Role of the CSB/BHA During the Commitment Period

- The CSB is a part of the treatment team. Even if the individual is not likely to be conditionally released for a very long time, it is necessary to begin working closely with the acquittee and the treatment team from the beginning.
- Begin discharge planning upon the acquittee's admission to the hospital. This starts with reviewing the individual's current risk factors and ways that those factors should be managed in the hospital and eventually in the community. Follow all discharge planning protocols. To review the *Collaborative Discharge Protocols for Community Services Boards and State Hospitals* go to: http://dbhds.virginia.gov/professionals-and-service-providers/mental-health-practices-procedures-and-law/protocols-and-procedures.
- Develop a rapport with the acquittee, help them understand your role and the role of other CSB staff (i.e., discharge planner/liaison) with whom they will interact at the hospital.
- Educate the acquittee on services available in the community.
- Have representation at all treatment team meetings. This includes the CSB discharge planner and/or the NGRI Coordinator.
- If the NGRI Coordinator is not able to attend treatment team meetings, there should be an internal CSB process established for them to receive information from those who do attend.
- The NGRI Coordinator must be aware of the components of the Analysis of Aggressive Behavior, Risk Management Plan, and current level of functioning. The NGRI Coordinator must also review and sign the Risk Management Plan before it is sent to the IFPC or FRP for any level starting with escorted community visits and higher. This means that the NGRI Coordinator should provide input to the team on whether the CSB has the resources to manage the individual's particular risk factors at each level.
- Review and provide feedback and sign all necessary paperwork sent to the CSB as quickly as possible. Delays in responding result in unnecessary delays to the acquittee's progress.
- The work of the CSB should always be focused on the acquittee's risk factors and management of those factors. Any concerns about the CSB's ability to manage those factors throughout each step of the graduated release process should be voiced to the treatment team and/or Forensic Coordinator as soon as possible so that a plan can be developed to overcome barriers to release.